

Qualified Tuition Programs/Internal Revenue Code (IRC) Section 529 Plans

Individual
Income
tax notice
#04-23

[Public Chapter 712 \(2004\)](#)

Effective May 18, 2004, Public Chapter 712 amended Tenn. Code Ann. Section 49-7-822 relative to the exemption of college educational savings plans, educational service plans, and college savings bonds (referred to herein collectively as “college savings plans”) from state and local taxation.

The Department of Revenue published information regarding the tax treatment of such college savings plans, including Tennessee qualified tuition programs, in Individual Income Tax Important Notice #03-09. At that time, assets of and distributions from Tennessee college savings plans were exempt from state and local tax under Tenn. Code Ann. Section 49-7-822. However, non-Tennessee plans were excluded from the exemption. Individual Income Tax Important Notice #03-09 is hereby rescinded and replaced with this notice.

Under Public Chapter 712, the exemption is no longer limited to Tennessee college savings plans. Instead, Tenn. Code Ann. Section 49-7-822 now exempts all assets, income, and distributions of both in-state and out-of-state college savings plans (including Internal Revenue Code Section 529 plans) from state and local taxation.

Below is an explanation as to how assets, income, and distributions of college savings plans are treated under income tax, inheritance tax, and gift tax based on Public Chapter 712.

INDIVIDUAL INCOME TAX

Income earned on college savings plans, as defined in Public Chapter 712, is exempt from individual income tax.

INHERITANCE TAX

Assets held in a college savings plan, as defined in Public Chapter 712, are not included in the gross estate of the decedent.

GIFT TAX

College savings plans allow the owner to retain control over the assets until they are distributed. This is a revocable transfer. Under Tennessee gift tax law, revocable transfers by the owner are not considered a completed gift and, therefore, no taxable event has occurred when the account owner makes contributions to the savings plan.

Individuals other than the account owner may make contributions to a college savings plan. In that case, an irrevocable transfer has taken place and the contribution will be subject to gift tax.

Distributions from college savings plans, when transferred to or used for the benefit of the beneficiary, may also be subject to gift tax. Under Tenn. Code Ann. Section 67-8-101(f), transfers to educational organizations for payment of tuition are not considered a gift. However, transfers used for any purpose other than payment of tuition are subject to gift tax if the total annual amount per donee to a single recipient exceeds \$11,000 in any one calendar year.

If you have any questions about this notice, you may contact the department. Tennessee residents outside the Nashville calling area may call our statewide toll-free number at (800) 342-1003. Callers from Nashville or out-of-state may dial (615) 253-0600. You can access additional information on our Web site at www.Tennessee.gov/revenue.

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